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Supreme Court, U.S.
FILED

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(1)

No.

In The

Supreme Court of the United States

DARREN J. BOYKINS

PETITIONER

vs.

TREMEKIA J. BOYKINS

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH CIRCUIT OF APPEAL
STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Fourth Circuit of Appeal erred by holding, in conflict with decisions of this court and other courts of appeals that Petitioner was not entitled to due process, procedural due process, and equal protection in partitioning community property:

1. Is Louisiana Revised Statute 9:2801 subject to the due process clause and equal protection of the U. S. Constitution?
2. If so, can all divorcing couples be afford equal protect of that legislative act and their property interest and rights be equally protected?

LIST OF PARTIES

Pursuant to Rule 14.1 (b), the following list identifies all of the parties appearing here and before the Fourth Circuit of Appeal State of Louisiana.

The Petitioner here and Appellant Respondent below is Darren J. Boykins.

The Respondent and Appellee is Tremekia Jones Boykins.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner state as follows:

Jazz City Parking of New Orleans, L.L.C., which is not a publicly traded corporation

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from state court:
The opinion of the highest state court to review the merits appear at Appendix A to the petition and is reported at 964 So. 2d 369 and was denied on 9/28/07.
The opinion of the court of appeal fourth circuit appears at Appendix B to the petition and is reported at 958 So. 2d 70 the opinion was issued April 24, 2007. Rehearing denied May 23, 2007.

JURISDICTION

For cases from state courts:
The date on which the highest state court decided my case was 9/28/07. A copy of that decision appears at Appendix A.
The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law."

The Fifth Amendment to the United States Constitution provides in pertinent part: nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF CASE

This case is urgently needed to be reviewed, not only to resolve the conflict it has cause among the many appellate courts, but also to protect the property rights / interest of divorcing couple and other types of partitioning of property, or property regimes. The review of this case is immediately needed to prevent the withholding of justice from couples property rights after the termination of the matrimonial regime. Fifty- one percents of all marriages end in divorce. That roughly 39 millions people having divorced in this country. It is important that divorcing couple not lose their property interest during the partitioning of the community property by some angry spouse' false accusations and by judges failure to follow the law and evidence. Scores of that 39 million people who have been divorce will be of blended families. Moreover, the kids of this type of family inheritance right must be protected. The United States of America is not a hypocritical nation. The Framer of the Constitution already concerned various facets of the family (both good and bad) and they developed the due process clause. Many state legislatures have followed the lead of the Framers and have enacted laws on their books to protect the property interest of divorcing parties; however, the court system must comply with the laws. In this case, the fourth circuit of appeal has created a conflict within its own circuit by grossly departing form the controlling precedents, jurisprudence of the United States of America, and the Louisiana Legislative will, which will surely lead to all types of confusion. Absent this Court's review, Petitioner will continue to be denied due process,

procedural due process, and equal protection of the law. This would equate to due process, procedural due process and equal protection being made on a as we feel like it type basis within the fourth circuit appeals court of Louisiana. Surely, the founding father did not intend for due process, procedural due process, and equal protection to be made on a prerogative type basis. The scales of justice must remain balance with integrity and fairness. The Constitution of the United State of America and the Constitution of Louisiana were framed on the principles of fairness. This case puts the Due Process Clause to test. Will favoritism replace the Due Process Clause? The Due Process Clause provides that the substantive rights of life, liberty, and property cannot be deprived except pursuant to constitutionally adequate procedures. The essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. The Supreme Court of United State stated in the case of **Mullane v. Central Hanover Bank and Trust Co. 339 U.S. 306, 313 (1950)** stated, "We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." In the case of **City of Cleburne, Texas v. Cleburne Living Center, Inc., 473 U.S. 432**, the Court held, "The equal protection clause essentially requires that all persons similarly situated be treated alike." They went on to say, "In many, if not most, equal protection cases, the classification to which the plaintiff objects is explicitly set out in the legislation under which the state acts." Yes, the law requires

equal application of the law in similar circumstance and the rights that need to be protected as clearly spelled out in the legislation. Nevertheless, in Petitioner case, the Four Circuit of Appeal of Louisiana deviated from this important principle and violated my due process, procedural due process, and equal protection of the law because the primary and only law that governs the partitioning of community property (**Louisiana Revised Statue 9:2801**)was not procedurally followed and fairly followed. Thus as the Justices will read, Petitioner was not awarded any community property in a community property state. Petitioner even lost ownership of property obtained by him before marriage. Even though Petitioner submitted evidence to prove ownership, the various courts in Louisiana dismissed the evidence presented by Petitioner as if it was a typical graphical error. Here is the background. Darren J. Boykins and Tremekia Jones Boykins[1] were married on June 26, 1999 in New Orleans, La. After being married for three years, Ms. Boykins filed for divorce on June 10, 2002. Respondent withheld service until September 15, 2002 as the couple were still living together in the same house and performing all activities as a married couple. The couple had no kids from this marriage[2]. The trial Court rendered a judgment of divorce on June 25, 2003. This divorce was illegal since the couple was married under the covenant marriage act which prohibited consent divorces and require all married couples to remain married for

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[1] Herein: Respondent

[2] Mr. Boykins does have a daughter from previous marriage living with him and she attends the Academy of the sacred Heart in New Orleans, La.

two years and seek court ordered professional counseling. Nothing in this case was done according to the law. The parties' community property regime was thereby terminated retroactive to the date Ms. Boykins filed her Petition for Divorce, June 10, 2002. Ms. Boykins filed the Petition to Partition Community Property on June 10, 2002 in combination with her Petition for Divorce. After the divorce was granted on June 25, 2003, the partition hearing was set for September 9, 10, and 11 of 2003[3]. Ms. Boykins filed her Sworn Detail Descriptive List[4] on September 5, 2003 with the Clerk of Court of Orleans Parish four days before the start of the partition hearing[5]. On September 7, 2003, Ms. Boykins signed the same Descriptive List under oath two days before the start of the partition hearing. Ms. Boykins did not have the Civil Sheriff of New Orleans, La. serve her Descriptive List nor did she mail Mr. Boykins a copy of the Descriptive List as required by **Louisiana Revised Statute 9:2801.** Louisiana Revised Statute 9:2801 states that once Respondent Sworn Detail Descriptive List was filed [September 5, 2003] Petitioner than had forty- five days to file his Sworn Detail Descriptive List. This was not done and the partition hearing was scheduled for September 9, 10, and 11, 2003. Four days after Respondent file her descriptive list, the partition trail was held. This is clearly not procedural due process. On the first day of the partition hearing, on September 9, 2003, Ms.

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[3] The Judge did not instruct either party to file a Sworn Detail Descriptive List when the partition hearing was set for trial.

[4] Herein: Descriptive List

[5] This was clearly contradicted the rules of Louisiana Revised Statute 9:2801.

Boykins Atty Mr. Patrick hand delivers/ serves a copy of her Descriptive List to Mr. Boykins in the courtroom five minutes into the start of the partition hearing. Her Descriptive List was hand served by her attorney in the courtroom five minutes in the trial process to Darren J. Boykins, whom had never seen it or any of Respondent exhibits. It (petition) was not served by the Civil Sheriff or mailed to Petitioner. Again, this is a clear violation of the law and another denial of Petitioner due process rights. Petitioner objected several time that his due process right were being violated, but the judge held the hearing anyway. Since Mr. Boykins was a Pro Se Defendant and had never been involved in any civil trial before, he had no idea what a Descriptive List was, thus, he did not file one immediately. Mr. Boykins had a copy of discovery that was submitted to Ms. Boykins and thought that was a Descriptive List. After two days of testimony by Ms. Boykins, Mr. Boykins realized what a Descriptive List was, went home after the second day hearing on September 10, 2003, and developed his Descriptive List. Mr. Boykins immediately file his Detail Descriptive List with the Clerk of Court on September 11, 2003 before the start of the third day of the partition hearing. The trial judge refused to accept my Descriptive List because he said it was late and Ms. Boykins did not have a chance to review my Descriptive List. Mr. Boykins told the Judge that he did not receive Ms. Boykins Descriptive List until September 9, 2003 in the courtroom during the trial and has never seen it before; thus, it was not fair that Mr. Boykins Descriptive List be improperly characterized as late and Tremekia Jones

Boykins Descriptive List not be characterized as being late also. Both parties Sworn Detail Descriptive List should have been deemed to constitute apart of the judicial determination of the community assets and liabilities even if, they are late because **Louisiana Revised Statute 9:2801** allowed the admission of them. The trial court refused to allow Mr. Boykins' Descriptive List to be apart of the community assets and liabilities. After three days of hearing, the partition hearing ended September 11, 2003.

The trial court rendered judgment on October 8, 2003, recognizing certain assets as community assets of the parties. The trial court never included Petitioner Descriptive List, thus all his debts remain under paid because they were not apart on the proceeding. The court set forth a detail list of these assets and detail list of the community debts that was included in Ms. Boykins Descriptive List and ordered that all assets and liabilities of the community that was included in her Descriptive List be adjudicated to Ms. Boykins. The Court did not include any of the liabilities of Petitioner, nor it deal with any of Petitioner claims for reimbursement included in his Descriptive List in direct violation of the law. The court order Ms. Boykins to extinguish the entire community debt, yet the court left out the community debt listed in Petitioner Descriptive List. The trial court gave Ms. Boykins all the community assets, which includes: the house, two business (Jazz City Parking, Inc. (which was started before the marriage and proof of the start of the business was submitted to the court) which bring in between

$24,000.00- $28,000.00 each and every month[6] and Daily Kleans Janitorial Supply Company [which bring in between $2000.00- $8000.00]), three Community vehicles (a convertible CLK Mercedes, a S-Type Jaguar, and a Ford F-150) , all the community furniture (worth over $90,000.00), a parcel of land across from the Ernest Morial Convention Center in New Orleans, LA worth at least $650,000.00 and gave Mr. Boykins a community weed- eater and said, "Darren J. Boykins owes Tremekia Jones Boykins $6,890.17 as an equalizing payment. There was nothing fair about that hearing. **Louisiana Revised Statute 9:2801** which governs how any property in Louisiana will be divide is strict, statutory, and mandatory, yet; the court did not follow the guideline set up by our state legislatures. Petitioner filed a devolutive appeal on October 30, 2003 and paid the Clerk of Court $7500.00 to file this appeal. Both parties submitted briefs to the Fourth Circuit of appeal with Mr. Boykins alleging fifteen assignments of error.

On April 24, 2007, the Court of Appeal Fourth rendered a Judgment in this matter affirming the decision of the lower court in all assignment of errors except number four. Mr. Boykins filed for rehearing, and May 23, 2007, the Court of Appeals denied the motion for rehearing. This left the unresolved issue of who is responsible for paying the back taxes of the business (over $150,000.00) and has left all of Petitioner debts unpaid.

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[6] Moreover, has been in business continuance since the business was seized from me in February 2003 to present. The court in another violation of Petitioner rights the court refused to allow him to receive half of the income from the business from the month of February 2003 – September 2003. This was cruel and unusual punishment.

REASONS FOR GRANTING THE WRIT

This case presents an exceptionally important question of law regarding the right to due process, procedural due process and equal protection of the law when it involves separating community property among divorcing couple in a community property state. In addition, questions concerning this law has not been but should be settled by this Court, and on which the circuits are in conflict. Since the Trial court and the Fourth Circuit failed to follow the United State Constitution, the due process clause, and failed to uphold the mandatory language of the statute verbiage that requires parties partitioning community property to follow Louisiana Revised statute 9: 2801, this violated Petitioner right to due process, and desecrated the statutory procedure promulgated for this process. The Petitioner was denied his due process, procedural due process and equal protection of the law. Both parties should have had the right to have their Sworn Detail Descriptive List be deemed to constitute the judicial determination of the community assets and liabilities because the statute allowed it. The Fourth Circuit of Appeal Court and the trial court failed adhere and failed to be in complete strict compliance with the mandatory , and statutory procedures of **Louisiana Revised Statute 9: 2801 (A) (1) (a) (b) (2)** and by failing to do so, has violated Petitioner property rights. They have also failed to follow controlling precedents and jurisprudence of The United States of America and the State of Louisiana.

I. This case raises the critically important question of deprivation of property without due

process to divorcing couple during the partitioning of the community property regime.

Essentially, the Fourth Circuit of Appeal and the lower court misconstrued and have completely ignored the due process clause. In fact, the ruling in this case is contrary to law. The **U.S. Const. Amend. V, XIV and La. Const. art. I, § 2** provide that no person shall be deprived of life, liberty, or property, except by due process of law. Both Petitioner and Respondent are co-owner of the community regime and both parties are entitled to protect their (revendicatory) property right. Thus, when that property right is affected, they are entitled to due process of law. The spirit of due process and equal protection provides that "No person shall be deprived of life, liberty, or property, except by due process of law and that No person shall be denied the equal protection of the laws and all courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to his person, property, reputation, or other rights."

The implication is that couple divorcing should have equal protection claims, so long as the law applies to all persons in the same circumstances and conditions in a like fashion, then the requirements of equal protection are met.

Petitioner main complaint is he was deprived of his rights and privilege afforded to him by the United States Constitution, and the Louisiana State Constitution. Petitioner had a legitimate claim of entitlement to equal protection of the Louisiana Revised Statute 9:2801and the benefits of that law that would protect his property interest sufficiently

to entitle him to due process (U.S.C.A. Const. Amend 14). In the case **Matthews v. Eldridge, 96 S. Ct. 893 U.S. Va., 1976,** the Court held, "The Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner." The Equal protection clause essentially requires that all persons similarly situated be treated alike. Equal protection of the law requires not only the laws be equal on their face, but also that they be executed so as not to deny equality. Even the Federal Rules of Civil Procedure require that defendant be given a fair notice of what the plaintiff's claims are and the grounds upon which it rests. The lower court allowed Respondent attorney to hand serve a pro se litigant during a hearing was in direct violation of due process, procedural due process, and equal protection of the law. Due process was completely abandoned in during that hearing. See **Conley v. Gibson, 355 U.S. 41, (1957)**. Because Petitioner was not afforded equal protection of the laws of the United States, Petitioner had a deprivation of his property without due process, a denial of the equal protection of the laws, and denial of procedural due process afforded by the constitution. Petitioner main complaint in essence is that the District's Court hearing held on September 9, 10, and 11, 2003 at the Partition of the community property regime was procedurally inadequate because Petitioner was not served with Respondent' Sworn Detail Description List[7] until five minutes into the hearing on September 9, 2003 along with several boxes of exhibits. Respondent's attorney hand delivered/ serviced the petition to Petitioner

[7] Herein SDDL

inside the courtroom five minutes into the hearing. The mere fact that Petitioner received the petition of the partition of the community property for the first time was on the day of the hearing and was hand served the petition during the hearing is a major denial of Petitioner due process and right to notice. Moreover, the lower court erred in stating, "Petitioner had adequate notice." In the case of **Armstrong v. Manzo, 85 S. Ct. 1187 U.S. Tex., 1965**, the Court held, "The due process clause requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." In the case of **Goldberg v. Kelly, 90 S. Ct. 1011 U.S. N. Y. 1970,** the Court confirmed, "Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. U.S.C.A. Const. Amend. 14."
The nature of this case and the legislative law and the State Legislators intent of the law [**Louisiana Revised Statue 9:2801**] is very clear, it establishes the policy that governs how parties are to divide their community property regime. These rules are both Statutory and mandatory. The Fourth Circuit of Appeal, the district court and the Respondent have acted in arbitrary and wanton manner, and have denied the Petitioner opportunity to be heard in a meaningful manner to receive an equal portion of the community property. Petitioner was also denied the opportunity to be heard by an impartial and unbiased tribunal. The Respondent actions deprived Petitioner of his substantive and procedural rights. In **Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709,** the Supreme Court explained, "the definition of property

interest, when it arises in the context of the fourteenth amendment is not limited by traditional concepts of ownership. Indeed, the property interest protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money. Consequently, besides protecting individual's interest in real and personal property, the fourteen amendment safeguards also extend to the interest that a person has already acquired in specific benefits." The Supreme Court explained "when" in Roth: To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." The Supreme Court has long held that the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims. The Supreme Ct. explained, property interest are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law.

In addition, it is important to point out that the federal constitutional law determines whether that interest rises to the level of a legitimate claim of entitlement is protected by the Due Process Clause. Petitioner wants the Justices to understand that the evidence proves that there has been a deprivation of property to establish a violation of the equal protection clause; he would like the court to review the uneven treatment that results in the lost of all

his property right. The court even penetrated the corporate vale by taking a corporation from Petitioner even though that business was clearly started before he married Respondent. In the case, City of **Cleburne, Texas v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L.Ed. 2d 313 (1985)**, the Supreme Court held, "The equal protection clause essentially requires that all persons similarly situated be treated alike. Nonetheless, in Petitioner case this was not done. Therefore, he has a cognizable equal protection claim. In addition, the Fourth Circuit of Appeal Court and the lower court should have validated this claim. Petitioner argument is the trial court was negligent by refusing to comply and follow the MANDATORY and STATUTORY PROCEDURE of **Louisiana Revise Statute[8] 9:2801 (A) (1) (a) (b), and (2)** and by doing so failed to follow the **controlling precedents and jurisprudence** of this state and thus denied Petitioner due process, procedural due process and equal protection of the laws of the United State Constitution, and the Louisiana State Constitution. Moreover this court failed to confirm that the only way for Respondent' Sworn Detailed Descriptive List[9] could constitute a judicial determination of the community is by filing a RULE TO SHOW CAUSE AND HAVE IT SET FOR A HEARING/ TRIAL DATE **(which <u>was not</u> done)** and the lower court erred by not requiring this. The law is very clear in its meaning and the application of it is straightforward. The La. R.S. 9:2801 is mandatory and statutory.

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[8] Herein: La. R.S. 9:2801
[9] Herein: SDDL

In pertinent part:

When the spouses are unable to agree on a partition of community property or on the settlement of the claims between the spouses arising either from the matrimonial regime, or from the co-ownership of former community property following termination of the matrimonial regime, either spouse, as an incident of the action that would result in a termination of the matrimonial regime or upon termination of the matrimonial regime or thereafter, **may institute a proceeding, which shall be conducted in accordance with the following rules**:

(1)(a) **Within forty-five days of service of a motion** by either party, each party shall file a sworn detailed descriptive list of all community property, the fair market value and location of each asset, and all community liabilities. For good cause shown, the court may extend the time period for filing a detailed descriptive list. **If a party fails to file a sworn detailed descriptive list timely**, the other party **may file a rule to show cause** why its **sworn detailed descriptive list should not be deemed to constitute a judicial determination of the community assets and liabilities.** At the hearing **of the rule to show cause**, the court **may either grant the request** or, for good cause shown, extend the time period for filing a sworn detailed descriptive list. If the court grants the request, no traversal shall be allowed.

(b) Each party shall affirm under oath that the detailed descriptive list filed by that party contains all of the community assets and liabilities then known to that party. Amendments to the descriptive lists shall be permitted. No inventory shall be required.

(2) Within sixty days of the date of service of the last filed detailed descriptive list, each party **shall** either **traverse or concur** in the inclusion or exclusion of each asset and liability and the valuations contained in the detailed descriptive list of the other party. For good cause shown, the court may extend the time period for a party to traverse or concur in the detailed descriptive list of the other party. The trial of the traverses may be by summary procedure. At the trial of the traverses, the court shall determine the community assets and liabilities; the valuation of assets shall be determined at the trial on the merits. The court, in its discretion, may by ordinary procedure try and determine at one hearing all issues, including those raised in the traverses...

(4) The court shall then partition the community in accordance with the following rules:

Notice that with the La. R. S. 9:2801, the partitioning of the community property does not

start until after La. R.S. 9:2801 (A) (1) (a) (b), (2) (3) are completed. In this case, at hand, those mandatory and statutory procedures were not followed at all. The rules governing the partition of community property must be followed in complete compliance. Again, On September 5, 2003, Attorney Roderick C. Patrick[10] files Respondent's SDDL (4th Circuit of Appeal record- Vol. 7 of 9 – pg 1392[11]) with Clerk of Court. On September 7, 2003, Respondent signs her SDDL and Mr. Patrick notarized it[12] (Vol. 7 of 9 pg 1399). Please notice that Petitioner's procedure rights to file his SDDL started on September 7, 2003. Thus having SDDL filed on September 11, 2003 was with the forty- five days limited of the statue, Petitioner still has a procedural right of sixty days to have a trial of traverse or concur in inclusion or exclusion of each asset or liability. In **Stringer v. Stringer, 698 So. 2d 965 (La. App. 1st Cir., 1997)** the court held (in pertinent part):," Where ownership and valuation of certain property remained disputed following settlement efforts, in action to partition community property, husband continued to have procedural due process right to traverse the ownership and valuation even though he did not timely comply with the trial court's judgment; upon such failure, wife[13]

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[10] Herein: Mr. Patrick

[11] Herein refers to Fourth Circuit official records

[12] If Respondent's SDDL is filed on 9/5/03 and signed on 9/7/03, when was it mailed? It was never properly served. Handing in court is NOT service. A Sheriff must serve it and here it was never mailed. It is not asking for leniency on this court's rulings for my not knowing the law well enough, but I was forced to trial with no DUE PROCESS. My request here today is to maintain appropriate standard of fairness.

[13] See: Charles v. Charles, 923 So. 2d 786 (La. App. 1st Cir., 2/10/06)

should have filed a rule to show cause why the trial court should not adapt her list as a judicial determination of the community assets and liabilities...defendant overlooked this requirement; therefore we vacate the April 29, 1996, judgment and grant plaintiff's request to remand this case."

On the first day of the Partition hearing on September 9, 2003, and five minute into the start of the trial, Mr. Patrick hand serves the Petitioner a copy of Respondent' SDDL. This is the issues at hand and not whether the trial judge has discretion to admit evidence, but due process. While the Judge does have discretion on the admission of evidence, the judge doe not have discretion on following the mandatory, and statutory procedures of **La. R. S. 9:2801 (A) (1) (a) (b) (2), and (3).** There was no due process or procedural due process given to Petitioner, and no notice given[14] by Mr. Patrick submitting Respondent SDDL to Petitioner at the hearing inside the court room. At the start of the hearing, **Petitioner objected** several times to the fact that the Court was not following the mandatory and statutory procedures of La. R.S. 9:2801(A) (1) (a) (b) (2) (3) , and (4) That hearing was not held in **complete compliance with the mandatory, and statutory procedures'** of Louisiana Revise Statute 9:2801 (A) (1) (a) (b) (2) (3) and by failing to do so, also failed to follow controlling precedents and jurisprudence of remanding a case back to the lower court to following the rules of the above mention statute.. In **Hicks v. Hicks, 497 So. 2d 44 (La. App. 3rd Cir., 1986)** the appellate court stated, "On

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[14] 72 hour notice before trial not given, and Rule 9.9 of local rules of the court was not followed.

appeal, Barby Hicks has raised a number of assignments of errors. However, because of our disposition of this case, we do not reach any of Mr. Hicks assignment of errors, Since we find that these proceedings were not conducted in compliance with the mandatory requirements of **LSA-R.S. 9:2801**, we vacate the District Court's judgment...Our jurisprudence states that this Statute provides mandatory procedures for the judicial partition...."[15]
In **Bible v. Bible, 895 So. 2d 547 (La. App. 1st Cir., 2004)** the court held, "The provisions of **LSA-R.S. 9:2801** are mandatory and because the trial court did not follow the procedural requirements, they vacated the judgment."
Also, it is well established that when court don't follow the jurisprudence of **Thomas v. Thomas, 552 So. 2d 793(La. App. 1st Cir.,, 1989)** that La. R.S. 9:2801 must be complied with because it is mandatory and statutory, those judgments are vacated and remand for a hearing consistent with the statute. In **Simon v. Simon, 698 So. 2d 965 (La. App. 4th Cir., 1982)**, In any event, the statue is procedural and we conclude that it now governs save as to partitions already so far underway that it would cause unnecessary expense or delay. The judgment of June 10 is therefore reversed and the matter remanded for further proceeding with this opinion. As the Justices can see, Petitioner has not received due process, procedural due process, or equal protection of the law. The simple fact that the court rejected Petitioner pleads, and chose to exclude

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[15] See also: **Johnson v. Johnson, 473 So. 2d 112 (La. App. 3rd Cir., 1985) and Hall v. Hall, 460 So. 2d 1053(La. App. 2nd Cir., 1984)**

Petitioners SDDL violated his equal protect and cause Petitioner to lose all his property right and left his debt unpaid. This cannot become the new method of due process!

The phrase "due process of law" in all cases, that is the kind of procedure which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts.

The Court of Appeals has abused its powers by mischaracterizing and misstating the testimony and the evidence that Petitioner presented in the trial court and by denying defendant due process, procedural due process, and equal protection of the law as guaranteed by the State of Louisiana and the U.S. Constitution.

Again, Petitioner had never seen Ms. Boykins' Sworn Detail Descriptive List before being having **it hand served to me in the courtroom during the partition trial proceedings**. The legislature is very clear on the reason for developing La. R. S. 9:2801. In the case at hand those mandatory and statutory procedure clearly were not followed and thus the Appeal Court and the lower court failed to follow controlling precedents and jurisprudence. Petitioners Descriptive list was filed on September 11, 2003 within the time limits **(and serve on Respondent in precise manner in which she served me)** allowed by LSA-R.S. 9:2801(A) (1) (a) and he should not be unfairly punish or denied due process because **Respondent chose to file her Descriptive list on September 5, 2003 and have her descriptive list hand service in the courtroom on Petitioner.** My procedural due process right starts to run on September 5, 2003 and the forty- days to file Petitioner descriptive List

cannot be negate by agreement or the law contrary to LSA-R.S. 9:2801. Petitioner in entitled to equal protection of the law as provided by LSA-R.S. 9:2801, The State Constitution, and the U.S. Constitution. This is a miscarriage of justice. In the of **Dohany v. Rogers, 50 S. Ct. 299 U.S. mich., 1930**, the Court held, "Due process" clause is satisfied if citizen has reasonable notice and reasonable opportunity to be heard and present claim or defense; due regard being had to nature of proceeding and character of rights affected." Clearly, being served a petition in court during a hearing and given several boxes of exhibits to prepare your defenses as the hearing with on is not adequate notice![16] In **Cunningham v. Parkdale, 660 S.W. 2d 810 Tex. 1983,** that court held, "Fundamental fairness dictates that a party must be given a reasonable opportunity to be heard on the merits of his case, and such an opportunity must be granted at a meaningful time and in a meaningful manner." In an another case named, **Moore v. Board of Edu. Of Fulton Public School No. 58, 836 S.W. 2d 943 Mo. 1992**, that court ruled, "Due process requires that in order to deprive a person of property interest, he must receive notice and an opportunity for hearing appropriate to the nature of the case." The nature of Petitioner case is Louisiana Revised Statue 9:2801.

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[16] **In re Interest of L.V., 482 N.W. 2d 250 Neb., 1992**, the Court stated, "Procedural due process includes notice to person whose right is affected by proceeding, that is timely notice reasonably calculated to inform person concerning subject and issues involved in proceeding; reasonably opportunity to refute or defend against charges or accusation; reasonable opportunity to confront and cross- examine adverse witnesses and present evidence on charge or accusation...."

Let's look at Louisiana due process cases. In **Mongogna v. O'Dwyer, 16 So. 2d 829 La., 1943**, that court stated, "The essential elements of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding rules and principles established in our system adapted to the nature of the case." In **Wilson v. City of New Orleans, 479 So. 2d 891 La.,** 1985, the court held,

"To one who protests against taking of property without due process of law, it is no answer to say that in his particular case due process of law would have led to same result because he had no adequate defense on merits; rather, it is enough to invoke procedural safeguards of Fourteenth Amendment that significant property...."

Our neighboring state of Alabama says it best in the case of **Almon v. Morgan Country, 16 So. 2d 511 Ala. 1944.** The court stated, "Procedural due process contemplates rudimentary requirements of fair play, including a fair and open hearing before a legally constituted court or other authority, with notice and opportunity to present evidence and argument, representation by counsel, is desired, and information as to claims of opposing party, with reasonable opportunity to controvert them." In Iowa, there is a case that benefits Petitioner. That case is **In re Marriage of Seyler, 559 N. W. 2d 7 Iowa, 1997.** The court held, "Due process mandates that those required to settle disputes through the judicial process must be given opportunity to be heard at meaningful time and in a meaningful manner." **In Interest of M.L., 239 N.W. 2d 289 N.D. 1976**, the courts stated, Due process requires notice of a hearing and of the general nature of the issues to be heard and an opportunity to prepare." More importantly, the court held in **Allstate Ins. Co. v. Fioravanti, 299 A. 2d 585 Pa. 1973** that,

"Adjudicatory action cannot be validly taken..., except on a hearing, wherein each party shall have the opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross- examine witnesses, to introduce evidence in his own behalf and to make argument." In addition to state laws and jurisprudence being subject to the due process clause, Federal jurisprudence is relevant in determining the nature and extent of the State Constitution's due process protection. In the case of **Randall v. Patch, 108 A. 97 Me.**,1919, that court stated, "A statute which purports to authorize procedure depriving an owner of his property, without opportunity for hearing and without notice, violates both the federal and state constitution."

II. The decision reached by the fourth circuit of appeal creates a direct and acknowledged conflict with all the other circuits in the State of Louisiana as it relates to **Louisiana Revised Statute 9:2801.** In addition, it creates a conflict with all the circuits in the United States of American. This decision even violated the Louisiana Rules of the Court. One such violation is District Court Rules 6.4 (Standard 1.3 Effective Participation) which states, "All who appear before the_court are given reasonable opportunities to participate effectively without undue hardship or inconvenience." Another violation is Rule 9.9. This rule requires that motion be served at least 15 calendar days before the hearing and 72 hour notice before documents can be admitted to court hearing [Also see Rule 8, sec. 2 of the effective local rules as well as La. C.C.P. art 966B]. How can divorcing couple in Louisiana receive due process and equal protection of the law if the fourth circuit does not obey the U.S.

Constitution? All divorcing couple property rights must be protected and due process is an essential part of that. The Louisiana Courts must be required to rule by the law and evidence for all parties involved in a divorce because this is the will of the state legislative body. As a result of the legislative will being neglect or negated, there is a need for immediate review of this case to ensure that the due process clause case is obeyed! In pertinent part because our constitution is founded on fairness.

In Cleveland Bd. Of Ed. v. Loudermill, 470 U.S. 523, 542, 105, S. Ct. 1487, 84 L. Ed. 2d 494 (1985) the Supreme Ct. held, "An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for a hearing appropriate to the nature of the case."

In City of New Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed. 2d 511(1976), the United States Supreme Court found the Due Process Clause protects from arbitrary and unreasonable actions and the judiciary is prohibited from acting as a superlegislature to judge the wisdom or desirability of legislative policy determination made in areas that neither affect fundamental rights nor proceed along suspect lines." The will of our state legislative is clearly spelled out in Louisiana Revised Statute 9:2801. Here is the sample of it will:

(a). **ACTS STATE OF LOUISIANA (VOLUME 11 REGULAR SESSION 1995) ACT No. 1008, SENATE BILL NO. 768, BY SENATORS BANKSTON, DARDENNE, GUIDRY, AND ULLO** states in pertinent part, "either spouse, upon termination of the matrimonial regime, or as an incident of the action which would result in a termination of the matrimonial regime, may

institute a proceeding, which shall be conducted in accordance with the following rules: (1) (a) Within forty- five days of a motion by either party, each party shall file a sworn detailed descriptive list of all community property."

(b). **ACTS STATE OF LOUISIANA (VOLUME 11 REGULAR SESSION 1992) ACT No. 825, SENATE BILL NO. 850 BY SENATOR JOHNSON AND REPRESENTATIVE MURRAY** states in pertinent part, "Be it enacted by the Legislature of Louisiana: Section 1. R.S. 9:2801(1) and (2) are hereby amended and reenacted to read as follows (in pertinent part): (2) Within sixty days of the date of the last filed detailed descriptive list, each party shall either traverse or concur in the inclusion or exclusion of each asset and liability and the valuations contained in the detailed descriptive list of the other party. For good cause shown, the court may extend the time period for a party to traverse or concur in the detail descriptive list of the other party. The trial of the traverse may be by summary procedure. At the trial of the traverses, the court shall determine the community assets and liabilities; the valuation of assets shall be determined at the trial on the merits". Approved by the Governor July 8, 1992.

(c). **ACT No. 28, HOUSE BILL NO.679 BY REPRESENTATIVE GREEN** states in pertinent part, "If a party fails to file a sworn detail descriptive list timely, the other party may file a rule to show cause why its sworn detail descriptive list should not be deemed to constitute a judicial determination of

the community assets and liabilities". The Governor approved this, May 18, 1993[17].

In **Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)** the Supreme Court held, "The right to due process is conferred not by legislative grace, but by constitutional guarantee."

The central meaning of procedural due process is well settled. Persons whose rights may be affected are entitled to be heard, and in an order that they may enjoy that right, they must first be notified and have an opportunity to be heard which must be extended at a meaningful time and in a meaningful manner and have, the opportunity afforded to them to be prepare. Once again, the fundamental requirement of procedural due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner [LSA-Const. Art. 1, § 2]. There are several circuits in Louisiana that follows the express will of the Legislature. Let's look at the second circuit interpretation of the law. In Hall v.

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[17] In pertinent part:" (A) either spouse upon termination of the matrimonial regime , may institute a proceeding, which shall be conducted in accordance with the following rules: (1) (a) Within forty- five days of service of motion by either party, each party shall file a sworn detail descriptive list of all community property...If a party fails to file a sworn detailed descriptive list, the other party may file a rule to show cause why it Sworn Detail Descriptive List should not be deemed to constitute a judicial determination of the community assets and liabilities. At the hearing of the rule to show cause... (2) Within sixty days of the date of the last filed detail descriptive list, each party shall either traverse or concur in the inclusion or exclusion of each asset and liability...The trial of the traverses may be by summary procedure...."

If the legislature wanted the court to have the authority to file a rule to show cause on it own, it would have enacted that in LSA-R.S. 9:2801. That power is not there, nor is it implied.

Hall, 460 So. 2d 1053,(La. App. 2nd Cir 1984) stated, "Husband and wife failed to follow mandatory[18] statutory procedure for judicial partition of community property... since neither party filed required sworn detail descriptive list of all community properties, neither party was in position to traverse or concur inclusion or exclusion of each asset and liability_... However, we note ex proprio, motu, that the petition filed by Mrs. Hall is not in compliance with **LSA-R.S. 9:2801**. We hold that this proceeding is to be governed by that statute and conducted according to its provisions. See Simon v. Simon, supra. Accordingly, we reserve_the judgment of the trial court and remand this matter...."The Appeal Court argument that the trail court has discretion to admit Respondent' Descriptive List on the first day of the partition hearing into evidence is misplaced. The main issue is does the judge have a discretionary right to denied a parties Descriptive List to be deemed a part of the community determination of assets and liability, without a Rule to show cause being file and a hearing held, and there be a pronounced judgment. The legislature and the court have said no. LSA-R.S. 9:2801 (A) (1) (a) was not written for decoration. It was design to protect the will of the people. The law requires a rule to show cause to filed to denied another parties descriptive list. The trial court does not have this discretion to arbitrarily deny a party the right to have his/ her descriptive denied from being deemed a part of the judicial determination of the community

[18] Any failure of the court of Louisiana in not following Louisiana Revised Statute 9:2801 is unconstitutional and will always lead to a divorcing couple to be deprived of liberty and property without due process.

assets and liabilities without a rule to show cause being filed by the parties involved in the partition. In **St. Pierre v. St Pierre, 479 So. 2d 575 (La. App. 1st Cir. 1985)** the court states, "It is black letter law that the term trial denotes a contradictory hearing through either ordinary or summary process... in the matter sub judice, the record is devoid of any evidence of a contradictory hearing... the record also fails to reflect the court's rationale for issuing such judgment sans a contradictory hearing or stipulation of the parties. Under such circumstance, we have no recourse but to remand.. We feel that in the interest of justice, the judgment must be reversed and remanded." The fourth circuit of appeal erred by attempting to grant the trial court power that is not granted by **LSA-R.S. 9:2801**. The trial court does not have the power to exclude one party descriptive without due process of law. In **Stringer v. Stringer, 698 So. 2d 965 (La. App. 1st Cir., 1997)** the court held, "Where ownership and valuation of certain property remained disputed following settlement efforts, in action to partition community property, husband continues to have procedural due process right to traverse the ownership and valuation even though he did not timely comply with the trial court's judgment, which ordered him to submit a suggested judgment; upon such failure, wife should have filed a rule to show cause why the trial court should not adapt her list as a judicial determination of the community assets and liabilities, and trial court erred in allocating the disputed property in it chambers, without a hearing in open court." In the case of Stringer v. Stringer, Supra, the court also stated, "the trial court's June 9, 1995, judgment ordered each party to "submit their individual

suggested judgment," apparently its attempt to expedite the settlement of the case. However, this judgment was, in essence, an order to submit a final detail descriptive list." A case on point to support Petitioner is **Charles v. Charles, 923 So. 2d 786 (La. App. 1 Cir., 2006)** that court held, " In this case, when Gerald failed to timely file his sworn detail descriptive list, after a hearing, the trial court granted Mildred's request that her sworn detail descriptive list be deemed to constitute a judicial determination of the community assets and liabilities. Therefore, at the July 14, 2004 hearing, a traverse to the trial court's April 6, 2004 was judicial determination was statutorily precluded." Accordingly, the Appeal Court and the trial court committed legal error by excluding Mr. Boykins Descriptive list without a rule to show cause hearing and denied Petitioner due process. We much recognize that all divorcing couples have a equal right to have due process, procedural due process, and equal protection when it comes to dividing community property after the termination of the matrimony regime.

In the case of **Regents v. Roth, 408 U.S. 564 (1972)**, the Court held, "Property interest, of course, are not created by the Constitution. Rather they are created... by existing rules or understanding that stem from an independent source such as state law-rule...that secure certain benefits and that support claims of entitlement to those benefits."

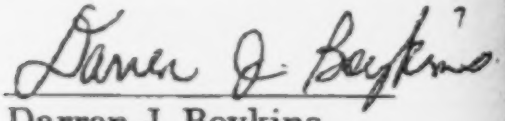
Finally, the fourth circuit of appeal and the lower court did not follow **LSA-R.S. 9:2801** and their ruling follows no logical, jurisprudential, or codal foundation. Thus, leaving the Fourth Circuit's decision intact send the wrong message to all

divorcing couple in the State of Louisiana, and thus erodes the public perception of the value of due process, procedural due process, and the equal protection clause of the United States Constitution. The foundation of the legal system was build by the Framers to include due process for all, especially divorce couples.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Darren J. Boykins,
Proper Person
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New Orleans, LA 70122
(504) 957-5906
Date: 12-26-2007

The Supreme Court of the State of Louisiana

Tremekia J. Boykins

VS. NO. 2007-C-1302

Darren J. Boykins

IN RE: Boykins, Darren J. ; - Defendant; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. L, Nos. 2002-9081; to the Court of Appeal, Fourth Circuit, No. 2004-CA-0999

.....

September 28, 2007

Denied.

BJJ
PFC
CDK
CDT
JTK
JLW

Supreme Court of Louisiana
September 28, 2007
/s/ Katherine A. Fontana
Deputy Clerk of Court
For the Court

TREMEKIA J. BOYKINS NO.2004-CA-0999

VERSUS COURT OF APPEAL

DARREN J. BOYKINS FOURTH CIRCUIT

STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO.2002-9081, DIVISION "L-DRS-1"
HONORABLE KERN A. REESE, JUDGE

******

JUDGE MICHAEL E. KIRBY

******

(Court composed of Chief Judge Joan Bernard Armstrong, Judge James F. McKay III, Judge Michael E. Kirby)

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IN PROPER PERSON,
DEFENDANT/APPELLANT

In this domestic matter, Darren Boykins appeals the trial court judgment partitioning the community property owned by Mr. Boykins and his former wife, Tremekia Boykins.

The parties were married on June 26, 1999, and the community property regime was terminated as of June 10, 2002. The trial court rendered a judgment of divorce on June 25, 2003. Subsequent to the judgment of divorce, a three-day trial was held on Ms. Boykins' petition to partition community property. The trial court rendered judgment on October 8, 2003, recognizing certain assets as community assets of the parties. The court set forth a detailed list of these assets, and a detailed list of community be adjudicated to Ms. Boykins. The court stated that its order required Ms. Boykins to extinguish the entire community debt. Included in the community assets were two businesses co-owned by the parties, Jazz City Parking of New Orleans, Inc. ("Jazz City Parking") and Daily Klean Janitorial Supply Company ("Daily Klean"). The court specified that it was granting Ms. Boykins full ownership in Jazz City Parking, all inventory, assets and debts of Daily Klean and all movable property acquired during the community. The court also stated that all other property not specifically enumerated in the judgment as community property was adjudicated as separate property of the parties.

Mr. Boykins was awarded all items of personal property in his possession as described in Ms. Boykins' sworn descriptive list, and the judgment listed those items. The court also allocated to Mr. Boykins the obligation for the GrayStar mortgage encumbering the Convention Center lot owned by the parties in the original amount of $81,000.00 plus interest and penalties, and ordered Mr. Boykins to extinguish the mortgage.

The judgment further ordered that Ms. Boykins is to receive reimbursement for separate funds paid on community obligations, and the judgment listed those items. The parties were each awarded the items of clothing and furniture in their possession, and were each ordered to pay their own federal and state tax obligations that accrued during the existence of the community. The court denied Ms. Boykins' claims relating to Mr. Boykins' dental work and amounts paid to Divine Providence Full Gospel Baptist Church, and also denied Mr. Boykins' claim for reimbursement for payments made by the community on Ms. Boykins' separate mortgage during the existence of the community. After tallying the assets and liabilities of the parties, and taking into account the reimbursement amounts ordered by the court, the court ordered Mr. Boykins to make an equalizing payment to Ms. Boykins, within thirty days, in the amount of $6,890.17. The court further ordered the parties to take all steps necessary,

including executing any reasonably necessary documents, to give judgment effect.

In reasons for judgment, the trial court noted that in support of her sworn descriptive list, Ms. Boykins presented credible testimony supported by a number of exhibits on the value of the community assets and debts. She also presented her original checking account statements; check registers and cash receipts to support her claims of reimbursement. Mr. Boykins chose not to take the stand or produce any testimony, but instead relied upon a few items of evidence and additional proffers. The court found that Mr. Boykins did not present any credible proof in his behalf.

Mr. Boykins appealed the trial court judgment, and has set forth twelve assignments of error in his appeal brief. In his first assignment of error, Mr. Boykins argues that the trial court erred as a matter of law in not following the provisions of La. R.S. 9:2801 relative to the partitioning of community property. Mr. Boykins claims that the trial court erred in not allowing him to submit his sworn descriptive list into evidence, even though the court allowed Ms. Boykins to submit her sworn descriptive list. The record shows that Ms. Boykins introduced her sworn descriptive list at the beginning of the three-day-trial. Her attorney noted that the documents introduced at trial by Ms. Boykins were available to Mr. Boykins' prior counsel

for review before the trial began. Mr. Boykins did not attempt to submit his sworn descriptive list into evidence until the third day of trial, and Ms. Boykins' attorney had not seen the list prior to that time. For these reasons, the trial court refused to all Mr. Boykins to introduce his sworn descriptive list.

A trial court is afforded great discretion concerning the admission of evidence, and its decision to admit or exclude evidence may not be reversed on appeal unless there is an abuse of that discretion. *Miller v. Southern Baptist Hospital*, 2000-1352 . 5 (La. App. 4Cir. 11/21/01), 806 So. 2d 10, 15. The trial court's decision to exclude Mr. Boykins' list was not an abuse of discretion.

Mr. Boykins also argues that the trial court erred in accepting the valuations listed in Ms. Boykins' sworn descriptive list. When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Rosell v. ESCO,* 549 So.2d 840, 844 (La. 1989). The trial court stated in its reasons for judgment that Ms. Boykins presented credible testimony in support of her sworn descriptive list. We conclude that the trial court's credibility determination was reasonable, and the decision to

accept the valuations provided by Ms. Boykins was neither manifestly erroneous nor clearly wrong.

Mr. Boykins further objects to the procedures used by the trial court in determining the partitioning of community property, and in the allocations ordered by the court regarding the community assets and liabilities. A review of the record shows that the trial court properly followed the provisions of La. R.S. 9:2801 in this partition proceeding. Furthermore, we find no merit in Mr. Boykins' argument that the trial court failed to allocate all the assets and liabilities of the parties. Mr. Boykins did not properly offer evidence of the additional liabilities that he claims were not listed in Ms. Boykins' sworn descriptive list. Accordingly, the trial court did not err in failing to allocate other liabilities allegedly owed by the parties.

Mr. Boykins' second argument is that the trial court erred in not granting his request for a continuance. A trial judge has wide discretion in controlling his docket, in case management, and in determining whether a motion for continuance should be granted. *Crawford v. City of New Orleans*, 2001-0802, p.4 (La.App.4 Cir. 1/23/02), 807 So. 2d 1054, 1056. Absent a showing of abuse of that discretion, a trial court's decision on a motion for continuance will not be disturbed on appeal. *Id.* Mr. Boykins made his request for a continuance on the day trial was scheduled to begin. In denying the

continuance, the trial court noted that the parties had been ample opportunity to prepare for trial and notice that trial was going to go forward on the scheduled date. We find no abuse of discretion in the trial court's decision to deny Mr. Boykins' request for continuance of trial.

Mr. Boykins' third argument is that the trial court erred in granting Ms. Boykins reimbursement for expenses relating to three vehicles. He claims that these vehicles were used exclusively by Ms. Boykins during her separation from Mr. Boykins, and that she should be responsible for these expenses. Ms. Boykins listed these items in her sworn descriptive list of community property. Mr. Boykins failed to offer any evidence to rebut that these vehicles were community property. Thus, the trial court's decision to order Mr. Boykins to reimburse Ms. Boykins for ½ of the expenses relating to these items was not error.

The fourth argument is that the trial court erred in placing judgment in its reasons for judgments. Specifically, Mr. Boykins objects to the trial court's statements in its reasons for judgment regarding the division of tax liabilities for Jazz City Parking, and the obligation of Mr. Boykins in the event that Ms. Boykins extinguishes the GrayStar Obligation. Reasons for judgment are not controlling and do not constitute the judgment of the court. *Kaufman v. Adrian's Tree Service, Inc.*, 2000-2381,

p. 3 (La.App. 4 Cir. 10/31/01), 800 So. 2d, 1102, 1104. A trial court's reasons for judgment it signs and from which appeals are taken. *Id.* In this case, even though the trial court improperly included language normally used in judgments in portions of the reasons for judgment, nothing in the reasons for judgment constitutes the judgment of the courts and the parties in this matter are only bound by the terms of trial courts judgment.

Mr. Boykins' fifth and sixth arguments allege error in the trial court's finding that Mr. Boykins misappropriated funds from Jazz City Parking, the parking lot business owned by the parties. The trial court's finding that Mr. Boykins misappropriated funds from Jazz City Parking, the parking lot business owned by the parties. The trial court's finding that Mr. Boykins misappropriated funds from this business is supported by the testimony and evidence provided by Ms. Boykins. Mr. Boykins did not provide any testimony or documentary evidence at trial to refute Ms. Boykins' evidence on the issue of misappropriation of funds. As stated above, the trial court fond Ms. Boykins to credible witness, and we find the court's credibility determination to be reasonable.

In Mr. Boykins' seventh assignment of error, he argues that the trial court erred is not labeling the GrayStar loan as a community debt. The trial court allocated to Mr. Boykins the GrayStar

mortgage encumbering the Convention Center lot in the amount of $81,000.00 plus all the interest and penalties, and ordered Mr. Boykins to extinguish the mortgage. The court noted in reasons for judgment that Mr. Boykins' encumbrance of this property was in violation of the court's October 4, 2002 order, and for that reason, this entire debt was allocated to Mr. Boykins. In his brief, Mr. Boykins acknowledges that he was prohibited from encumbering this property, but claims nonetheless that this debt should be designated as a community debt because the loan was obtained for the benefit of the community.

The trial court did not err in allocating the GrayStar loan obligation solely to Mr. Boykins. We find no merit whatsoever in Mr. Boykins' contention that the parties should share this debt obligation, which Mr. Boykins admittedly obtained in direct violation of a court order.

Mr. Boykins' eighth assignment of error deals with the trial court's decision to adjudicate as community property three lines of credit obtained from banks for the purpose of purchasing land for Jazz City Parking. Mr. Boykins argues that these lines of credit should have been classified as the separate property of Ms. Boykins because he allegedly signed waivers stating that he had no rights to the funds she was borrowing to loan to the parking lot business.

The record shows that Ms. Boykins' offered testimony and documentary evidence in support of her contention that these lines of credit were obtained to buy the property used for the parking lot business owned by both parties during the community regime. Mr. Boykins did not controvert this evidence. The trial court found that Ms. Boykins established that these lines of credit were community property, and we find no error in that conclusion.

In his ninth assignment of error, Mr. Boykins argues that the trial court erred in finding that the house located at 6920 Queensway Drive in New Orleans was Ms. Boykins' separate property. He argues that the court erred in not classifying this property as community property. Alternatively, Mr. Boykins argues that is the property is Ms. Boykins' separate property, then the trial court erred in not awarding Mr. Boykins reimbursement for is half of the mortgage payments made on the property during the existence of the community.

At trial, Ms. Boykins established that she purchased the property on Queensway Drive two days before her marriage to Mr. Boykins. However, Mr. Boykins argues that the parties had an "oral agreement" that the property would be community property. Ms. Boykins testified that she purchased the property for herself, and not for her and Mr. Boykins. Mr. Boykins did not offer any evidence to

refute Ms. Boykins' assertion that this was her separate property. Therefore, the trial court correctly held that this property is Ms. Boykins' separate property.

The trial court also denied Mr. Boykins' claim for reimbursement for payments made by the community on Ms. Boykins' separate mortgage. In reasons for judgment, the trial court noted that neither Mr. Boykins nor Ms. Boykins presented any evidence of the community. Accordingly, the trial court did not err in denying Mr. Boykins' claim for reimbursement.

Mr. Boykins' tenth assignment of error is that the trial court erred in not granting him half of the profits of Jazz City Parking for the period of February 2003 through September 2003, and in granting Ms. Boykins an award for her management of this business from April 2003 through September 2003. As stated above, we find no error in the trial court's finding that Mr. Boykins misappropriated funds from Jazz City Parking. The court found that this misappropriation totaled $218,882.43. Additionally, Ms. Boykins testified regarding her management duties performed for this business, and Mr. Boykins did not offer any evidence to refute this testimony. Given the evidence concerning Mr. Boykins' misappropriation of funds from the parking lot business, and evidence concerning Ms. Boykins; management of the business, we conclude that the

trial court did not err in failing to award Mr. Boykins half of the profits from Jazz City Parking for the period of February 2003 through September 2003, nor did the court err in allowing Ms. Boykins reimbursement for fees earned for managing this business from April 2003 through September 2003.

In his eleventh assignment of error, Mr. Boykins argues that the trial court erred in classifying Jazz City Parking as community property rather than as his separate property. Specifically, he claims that the trial court erred in finding that a sole proprietorship owned before marriage and incorporated during marriage is community property. Although the court made no such specific finding in its judgment, the court did classify the business entity of Jazz City Parking as community property.

At the same time of the trial of the partition of community property, the parking lot business owned by the parties was a corporation, i.e. Jazz City Parking of New Orleans, Inc. This corporate entity was created during the existence of the community, and is therefore community property. *See* La. C.C. article 2338. Mr. Boykins did not offer any evidence to rebut the presumption that this property belonged to the community. *See* La.C.C. Article 2340. Accordingly, the trial court did not err in classifying Jazz City Parking as community property.

Finally, Mr. Boykins argues in his twelfth assignment of error that the trial court erred in valuations of Jazz City Parking and Daily Klean. As stated above in the discussion of Mr. Boykins' first assignment of error, the trial court found that Ms. Boykins presented credible testimony in support of her sworn descriptive list, which included these two businesses. Mr. Boykins did not offer any evidence to rebut the valuations offered by Ms. Boykins. The trial court's credibility determination as to Ms. Boykins was reasonable, and the decision to accept her valuations of the two businesses was neither manifestly erroneous nor clearly wrong.

In addition to his twelve assignments of error, Mr. Boykins also listed several issues of law presented for review, most of which have been covered in his assignments of error. Mr. Boykins asserts that the court improperly awarded Ms. Boykins' attorney some of the personal assets. There is not such award in the trial court's judgment. Mr. Boykins' allegations regarding perjury and misrepresentation of information to the court are completely unsubstantiated. Finally, in response to Mr. Boykins' statement regarding whether a court should be lenient, indulgent or relax court rules for a pro se litigant, we not that it is clear from the record that the trial gave Mr. Boykins a tremendous amount of leniency at trial with regard to his self-representation in this matter.

For the reasons stated above, we affirm the trial court judgment.

COURT OF APPEAL, FOURTH CIRCUIT

STATEMENT OF LOUISIANA

410 Royal Street

New Orleans, La 70130-2199

Clerk's Office, New Orleans, this May 23, 2007

To Whom It May Concern:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED.

TREMEKIA J. BOYKINS

VERSUS

DARREN J. BOYKINS

CASE NO. 2004-CA-0999

Sincerely,

DANIELLE A. SCHOTT
CLERK OF COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 2002-9081 DIVISION L SECTION DRS I

Tremekia J. Boykins

Versus

Darren J. Boykins

Filed:_____ DEPUTY CLERK:_____

JUDGEMENT

The Court conducted a trial on Tremekia Boykins' "Petition to Partition Community Property" on the 9th, 10th, and 11th of September, 2003.

Present: Roderick Christopher Patrick, Attorney for Tremekia Boykins; and

Darren Boykins, In Proper Person.

After considering the law, evidence, and argument of counsel, the Court designates this judgment as a final judgment on all issues:

IT IS ORDERED, ADJUDGED, AND DECREED that the Court recognizes the

following assets as community assets of the parties:

Interest in various properties from tax sales: $831.25
Household Furnishings and Clothes: Divided in Kind
2001 Mercedes CLK 320A: $38,700.00
2000 Ford E250: $5,975.00
2000 Jaguar S-Type: $20,700.00
Jazz City Parking of New Orleans: $456,713.58
Daily Klean (Not Incorporated): $0.00
One (1) Rolex Watch: $7,800.00
One (1) Gold Diamond Ring: $300.00
One (1) Gucci Watch: $1,000.00
One (1) Gold Bracelet:$200.00
TOTAL: $532,219.83

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that all assets and liabilities of the community are adjudicated to Tremekia Boykins.

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that the Court adjudicates all leaseholds held by Jazz City Parking of New Orleans, Inc. to remain with Jazz City Parking of New Orleans, Inc. and Tremekia Boykins. Tremekia Boykins is also granted full ownership of Jazz City Parking of New Orleans, Inc.

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that Tremekia Boykins is granted all inventory, assets and debts of Daily Klean.

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that all community movables acquired

during the community are adjudicated to Tremekia Boykins. All other property not enumerated specifically to either party shall be adjudicated as their separate property.

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that the following are liabilities of the community and Tremekia Boykins is required to extinguish the entire community debt:

Note on Mercedes CLK 320:
$29,367.62
2000 Ford E250:
$11,889.25
Bank One Card (4246 3119 2702 6598):
$12,073.62
Saks First Card (1013-100-688):
$3,426.01
Citi Platinum Select Card (5424 1804 5232 0267):
$9,328.16
Regions Platinum Card (5490 9982 4741 49424):
$12,896.32
Sam's Credit Card (77 1001 425101 1):
$646.83
Home Depot Card (24 8025 035344 0):
$948.06
Bank One Line of Credit Signed 12/05/01:
$45,901.88
Bank One Line of Credit Signed 12/21/01:
$48,462.51
Regions Bank Line of Credit Signed 12/19/01:
$20,517.35
Hibernia Bank Line of Credit Signed 12/30/01:
$44,500.87
Schneider Paper Products, Inc.: $696.34

Lagasse:
$2,391.48
Snee Chemical Company:
$762.03
Nu-Lite (Approximately):
$563.71
Oreck:
$282.26
Dell Financial Services:
$4,481.36
2001 Mercedes CLK 320A Property Tax:
$471.63
Daily Klean Phone Bill BellSouth:
$289.89
Methodist Hospital Bill:
$1,241.50
Tremekia Boykins' Attorney's Fees:
$38,933.72
TOTAL LIABILITIES:
$290,072.60

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that Darren Boykins is awarded all items personal property listed as being in Darren Boykins' possession as described in Tremekia Boykins' Sworn Descriptive List including the community edger, Gucc watch and Darren Boykins' personal clothing. Assets : Darren Boykins' possession are as follows:

Misappropriation of funds from
Jazz City Parking of New Orleans, Inc.: $218,882.43
One (1) Rolex Watch:
$7,800.00
One (1) Gold Diamond Ring:

$300.00
One (1) Gucci Watch:
$1,000.00
One (1) Gold Bracelet:
$200.00
Total: $228,182.43

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that Darren Boykins is allocated the obligation for the GrayStar mortgage (in accordance with its terms and conditions) encumbering the Convention Center lot in the original amount of $81,000.00 plus all interest, penalties, and late charges which have accrued. Darren Boykins is required to extinguish said mortgage.

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that Tremekia Boykins shall receive the following reimbursements for her separate funds paid on community obligations:

2001 Mercedes CLK 320:½ of $
$16, 249.35
2000 Ford E250: ½ of $
$610.73
Bank One Card: ½ of $
$732.00
Saks First Card: ½ of $
$1,215.00
Citi Platinum Select Card: ½ of $
$1,387.73
Regions Platinum Card: ½ of $
$1,001.00
Sam's Credit Card: ½ of $
$383.00

Bank One (DEF) ($49,000.00): ½ of $
$1,006.18
Bank One: ($50,000.00): ½ of $
$2,555.00
Regions Bank: ($20,000.00) : ½ of $
$2,400.00
Hibernia Bank ($45,000.00): ½ of $
$4,718.80
Snee Chemical: ½ of $
$1,821.72
Methodist Hospital: ½ of $
$200.00
Jazz City Parking of New Orleans Phone Bill: ½ of $
$34.80
Methodist Hospital: ½ of $
$200.00
Alltel: ½ of $
$153.44
Loan to Daily Klean: ½ of $
$285.00
Loan to Daily Klean: ½ of $
$160.00
Civil Sheriff Costs: ½ of $
$236.11
Loan to Daily Klean: ½ of $
$130.00
Loan to Jazz City Parking of New Orleans: ½ of $
$1,000.00
Additional Management Fees owed to Tremekia Boykins for management from 04/15/03-09/10/03
$16,242.85
TOTAL:
$34,482.80

IT IS FURTHUR ORDERED, ADJUDGED, AN
DECREED that the parties are each awarded the iten

of clothing and furniture in their possession and are each required to pay their own Federal and State tax obligations which accrued during the existence of the community.

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that Tremekia Boykins' claims relating to Darren Boykins dental work and Tremekia Boykins' claims relating to amounts paid to the Divine Providence Full Gospel Baptist Church are DENIED.

IT IS FURTHUR ORDERED, ADJUDGED, AND DECREED that Darren Boykins' claim for reimbursement for payments made by the community on Tremekia Boykins' separate mortgage during the existence of the community is DENIED.

RECAPITULATION

Assets in the possession of Tremekia Boykins:
$304,037.40
Assets in the possession of Darren Boykins:
$228,182.43
TOTAL ASSETS:
$532,219.83

LIABILITIES:
($290,072.60)

TOTAL REIMBURSEMENTS:
Tremekia Boykins: $34,482.80
Darren Boykins: $0.00

	Tremekia	Darren

Total assets subtracted by Total Liabilities=$242,147.23

½ of Community Assets:	121,073.61	$121,073.
Offset reimbursements:	$34,482.40	$34,482.4
Assets in each party's possession:	($304,037.40)	($304,037.4
Amount Due to each:	($148,481.39)	($141,591.2

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that Darren Boykins is required to make Tremekia Boykins an equalizing payment, within thirty (30) days, in the amount of $6,890.17.

IT IS FURTHUR ORDERED, ADJUDGED, AN DECREED that the parties are required to take al th necessary and execute all documents reasonably necessary to give this Judgment effect.

NEW ORLEANS, LOUISIANA this ____ day of October 2003.

/s/

BEST AVAILABLE COPY

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 2002-9081 DIVISION L SECTION DRS I

Tremekia J. Boykins

Versus

Darren J. Boykins

Filed:_____ DEPUTY CLERK:_____

REASONS FOR JUDGMENT

The Court conducted a trial on Tremekia Boykins' "Petition to Partition Community Property" on the 9th, 10th, and 11th of September, 2003.

Present: Roderick Christopher Patrick, Attorney for Tremekia Boykins; and

Darren Boykins, In Proper Person.

The court after considering the law, evidence, and for the following reasons, renders judgment as follows:

The parties were married on June 26, 1999, and the community property regime terminated as of June 10, 2002. A judgment of divorce was entered on June 25, 2003, ending the marriage between the parties.

The Court finds that the following assets were acquired during the community and assigns the following value to these assets as filed by Tremekia Boykins in her Sworn Descriptive List.

Interest in various properties from tax sales: $831.25
Household Furnishings and Clothes: Divided in Kind
2001 Mercedes CLK 320A: $38,700.00
2000 Ford E250: $5,975.00
2000 Jaguar S-Type: $20,700.00
Jazz City Parking of New Orleans: $456,713.58
Daily Klean (Not Incorporated): $0.00
One (1) Rolex Watch: $7,800.00
One (1) Gold Diamond Ring: $300.00
One (1) Gucci Watch: $1,000.00
One (1) Gold Bracelet:$200.00
TOTAL: $532,219.83

The court accepts that during the existence of the community, the following community liabilities were incurred:

Note on Mercedes CLK 320: $29,367.62
2000 Ford E250:

$11,889.25
Bank One Card (4246 3119 2702 6598):
$12,073.62
Saks First Card (1013-100-688):
$3,426.01
Citi Platinum Select Card (5424 1804
5232 0267): $9,328.16
Regions Platinum Card (5490 9982
4741 49424): $12,896.32
Sam's Credit Card (77 1001 425101 1):
$646.83
Home Depot Card (24 8025 035344 0):
$948.06
Bank One Line of Credit Signed
12/05/01:
$45,901.88
Bank One Line of Credit Signed
12/21/01:
$48,462.51
Regions Bank Line of Credit Signed
12/19/01:
$20,517.35
Hibernia Bank Line of Credit Signed
12/30/01:
$44,500.87
Schneider Paper Products, Inc.: $696.34
Lagasse:
$2,391.48
Snee Chemical Company:
$762.03
Nu-Lite (Approximately):
$563.71
Oreck:
$282.26
Dell Financial Services:

$4,481.36
2001 Mercedes CLK 320A Property Tax:
$471.63
Daily Klean Phone Bill BellSouth:
$289.89
Methodist Hospital Bill:
$1,241.50
Tremekia Boykins' Attorney's Fees:
$38,933.72
TOTAL LIABILITIES:
$290,072.60

At trial, Tremekia Boykins testified that each and every obligation described above was in her name only with the exception of the Methodist Hospital Bill in the amount of $1,241.50. Thus, Tremekia Boykins is to extinguish the entire community debt and receive a credit from the community. Darren Boykins did not call any witnesses to controvert this testimony and Darren Boykins declined to testify on his own behalf.

The court finds that Tremekia Boykins made payments on the community debt with funds from her separate estate and is entitled to reimbursement from the community as follows:

2001 Mercedes CLK 320:½ of $
$16, 249.35
2000 Ford E250: ½ of $
$610.73

Bank One Card: ½ of $
$732.00
Saks First Card: ½ of $
$1,215.00
Citi Platinum Select Card: ½ of $
$1,387.73
Regions Platinum Card: ½ of $
$1,001.00
Sam's Credit Card: ½ of $
$383.00
Bank One (DEF) ($49,000.00): ½ of $
$1,006.18
Bank One: ($50,000.00): ½ of $
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$1,821.72
Methodist Hospital: ½ of $
$200.00
Jazz City Parking of New Orleans
Phone Bill: ½ of $
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Loan to Daily Klean: ½ of $
$285.00
Loan to Daily Klean: ½ of $
$160.00
Civil Sheriff Costs: ½ of $
$236.11

Loan to Daily Klean: ½ of $
$130.00
Loan to Jazz City Parking of New Orleans: ½ of $
$1,000.00
Additional Management Fees owed to Tremekia Boykins for management from 04/15/03-09/10/03
$16,242.85
TOTAL:
$34,482.80

The parties are each awarded the items of clothing and furniture in their possession and are each required to pay their own Federal and State tax obligations, which accrued during the existence of the opportunity. As to tax liabilities for Jazz City Parking of New Orleans, Inc, Darren Boykins shall pay the tax liabilities prior to February 7,2003 and from the date forward, Tremekia Boykins shall pay all tax liabilities for Jazz City Parking of New Orleans, Inc. The Defendant Darren Boykins shall indemnify and hold harmless Tremekia Boykins of any liability of Jazz City Parking of New Orleans, Inc. under his management during the period of June 10, 2002, to February 7, 2003.

Darren Boykins has already received $9,300.00 worth of community jewelry (Rolex Watch, Gold Diamond Ring, Gucci Watch, Gold Bracelet).

The Court finds that Darren Boykins has previously misappropriated $218,882.43 from Jazz City Parking of New Orleans Inc. and Tremekia Boykins is entitled to a payment of ½ of $218,882.43 or $109,441.21 from Darren Boykins. The misappropriation in the above amount is derived from following:

1. The Court finds that the average gross receipts of Jazz City Parking of New Orleans, Inc. averaged around $30,000.00 a month based upon testimony and evidence.
2. The Court finds that the express of Jazz City Parking of New Orleans, Inc. averaged $18,000.00.
3. Darren Boykins had exclusive use of the profits for June 10, 2002 to October 31, 2002. The Court calculates these profits to be $48,000.00.
4. Darren Boykins had exclusive use of all gross revenues from Jazz City Parking of New Orleans, Inc. from November to December of 2002 in the amount of $90,000.00.
5. Darren Boykins additionally executed the GrayStar Mortgage and received an $81,000.00.

The Court denies Tremekia Boykins' claims relating to Darren Boykins' dental work, and

Tremekia Boykins' claims relating to amounts paid to the Divine Providence Full Gospel Baptist Church. These debts were incurred during the existence of the community and have already been liquidated and thus not susceptible to be allocated in one way or another.

The Court also denies Darren Boykins' claims for reimbursement for payments made by community on Tremekia's Boykins separate mortgage during the existence of the community. Darren Boykins raised this issue, but no evidence was presented by Darren Boykins to verify payment on the mortgage during the existence of the community now was any evidence given by Tremekia Boykins to rule on this issue.

The Court also finds that Darren Boykins encumbered the community parking lot at the Convention Center in the amount of $81,000.00 by obtaining a mortgage from GrayStar Mortgage. The Court finds that Darren Boykins did not properly and lawfully incur this community debt. Thus, the debt incurred by Darren Boykins on February 17, 2003 is adjudicated as the separate debt of Mr. Boykins. Darren Boykins received the entire $81,000.00 and he is required to pay back this entire separate debt under its original terms and conditions. In the event Tremekia Boykins extinguished the GrayStar obligation, Darren Boykins shall be required to pay Tremekia Boykins

any amounts, which were previously owed to GrayStar under the same conditions provided in the GrayStar note.

In support of her Sworn Descriptive List, Tremekia Boykins presented credible testimony supported by a number of exhibits on the value of the community assets and debts of community. Tremekia Boykins also presented her original checking amount statements, chec registers, and cash receipts to support her claims for reimbursement. Darren Boykins chose not to take that stand nor produce any testimony, but solely relied upon a few articles of evidence and additional proffers. Thus, the Court finds that Darren Boykins did not present any reasonable credible proof in his behalf. Accordingly, judgment is entered as set forth in the attached judgment.

NEW ORLEANS, LOUISIANA this ____ day of October 2003.

/s/_____

Judge